IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23354 of 2007(E)

PETITIONER:

M/S. KAILAS CASHEW EXPORTS, PEZHUKONAM, EZHUKONE, CHEERANKAVU, KOLLAM, REPRESENTED BY ITS PROPRIETOR, SHRI P.SOMARAJAN.

BY ADV. SRI.N.RAGHURAJ

RESPONDENTS:
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1. **THE REGIONAL PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION, SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, COCHIN-682 017.**

2. **THE EMPLOYEES PROVIDENT FUNDS APPELLATE TRIBUNAL, NEW DELHI.**

BY ADV.SRI.S.GOPAKUMARAN, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN,J

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W.P.(C).No.23354 of 2007

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Dated this the 31st day of July 2007

JUDGMENT

The petitioner is an establishment covered under the Employees Provident Funds and Miscellaneous Provisions Act. Proceedings have been initiated under Section 7A of the Act seeking to recover contributions in respect of 204 employees, in respect of whom, according to the petitioner, no contributions are payable. The first respondent passed an order demanding an amount of Rs.37,87,896/- as per Ext.P1 order. The petitioner is stated to have filed Ext.P2 appeal before the second respondent Tribunal. Petitioner has filed this writ petition aggrieved by the recovery proceedings pursuant to Ext.P1 even before the petitioner could move the Tribunal for interim orders in the appeal. The petitioner therefore, seeks stay of all further proceedings pursuant to Ext.P1 till the Tribunal passes orders on the prayer for interim relief in Ext.P2.

2. I have heard the learned standing counsel appearing for the Provident Fund organisation also. The standing counsel would submit that no recovery proceedings have yet been initiated. According to him an amount of Rs.17,74,896/- is due as employees share alone and the petitioner may be directed to pay that amount atleast as a condition for stay of all further proceedings. The learned counsel for the petitioner submits that when the liability to pay contributions in respect of those employees itself is under challenge, there is no justice in directing payment of any amount atleast until the petitioner can move to the Tribunal for interim orders in the appeal.

3. I have considered the rival contentions. I find that Ext.P1 order has been passed only on 22.6.2007. That being so the petitioner should have been given some time to approach the Tribunal for interim orders in Ext.P2 appeal. Accordingly the writ petition is disposed of as follows.

The petitioner shall move the Tribunal for interim orders within two months from the date of receipt of a copy of this judgment. If the petitioner so moves the Tribunal further

proceedings pursuant to Ext.P1 order shall be kept in abeyance till the Tribunal passes orders on the interim prayers, provided under the petitioner pays an amount of Rs.1,00,000/- within two weeks as part payment of the amount covered by Ext.P1 subject to the orders in the appeal. The amount shall be paid to the first respondent.

S.SIRI JAGAN, JUDGE

dvs